TAN LAI WAH v. FIRST NATIONAL BANK OF CHICAGO

[P.C. (Lord Diplock, Lord Keith of Kinkel, Lord Scarman, Lord Brightman & Sir Denys Buckley) February 8, 1984]

[Privy Council Appeal No. 38 of 1981]

Banking – Bank granting overdraft facilities – Guarantee for unlimited liability – Plea of non est factum – Plea rejected by appellate court.

Contract – Non est factum – Plea rejected.

In this case the appellant was a successful landbroker for 17/18 years. She contended that she did not know that the document which she signed was a guarantee for an unlimited amount otherwise she would not have signed it. Although her plea of *non est factum* was accepted by the trial court, this judgment was reversed by the Court of Appeal – See [1982] 2 M.L.J. 100. The appellant appealed.

Held: the appeal must be dismissed as the Court of Appeal was correct in rejecting the plea of *non est factum.*

PRIVY COUNCIL APPEAL FROM SINGAPORE.

John C. Beveridge Q.C. (*Miss Tuan Kay* with him) for the appellant.

R. Alexander Q.C. (*N. Chambers* with him) for the respondent.

Lord Diplock (delivering Decision of the Board): This is an appeal brought by a Chinese lady who had been a successful land broker for 17/18 years. The appeal is against a judgment for moneys payable under a guarantee of an overdraft entered into as long ago as 1974. The only defence persisted in before their Lordships was one of *non est factum* to the guarantee which was signed. It was first raised some 15 months after the defence had originally been filed. The learned trial judge surprisingly upheld that defence. His judgment was reversed by the Court of Appeal for reasons with which their Lordships can find no fault. Their Lordships would merely refer to the last sentence of the Court of Appeal's judgment on this particular issue:–

"It is also our view that having regard to her long experience as a land broker and other spheres of business as previously set out – factors which the learned trial judge appeared to have not considered – her mere assertion that she thought the document she signed was one guaranteeing her a half share in [that parcel of land] was unbelievable."

While paying a deserved tribute to the ingenious and seductive arguments advanced by Mr. Beveridge in an endeavour to uphold the judgment of the trial judge, their Lordships must nevertheless dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Cameron Markby; Coward Chance.*

SINGAPORE REPORTS

KWONG KUM SUN (S) PTE. LTD. v. LIAN SOON SIEW & ORS.

[C.A. (Wee Chong Jin C.J., Sinnathuray & Rajah JJ.) January 10, 1984]

[Singapore – Civil Appeal No. 83 of 1982]

Contract – Claim for payment for work done and materials supplied – Counterclaim – Whether there was binding contract – Parties must have "finished reaching an agreement" – Court to infer intention.

On March 13, 1976, the HDB awarded to the respondents, a firm of building contractors, a contract to build 8 blocks of single storey workshops, an electrical substation and 2 transformer rooms at Jalan Eunos. The respondents agreed to complete the project by February 8, 1977 unless extensions were granted by the HDB. On April 15, 1976, the appellants, a company carrying on business as importers of glass sheets and engaged as glazing contractors, wrote to the respondents a letter offering to supply and install glass for the project. The respondents on the same day notified their confirmation and acceptance of the offer on the letter itself.

The present appeal arose from a claim by the appellants for the sum of $11,835.01 for work done and glass materials supplied to the respondents. The respondents counterclaimed for the sum of $9,011.00 for the additional costs paid to another contractor to complete the works and the sum of $104,370.00 being liquidated damages paid by the respondents to the HDB. The trial judge gave judgment for the respondents against the appellants for the sum of $73,479.89 and costs. The appellants appealed on the ground, *inter alia,* that the learned Judge had wrongly held that the letter had created a binding contract between the parties when on the evidence he should have found that the letter was an invitation to treat.

Held, dismissing the appeal: (1) the general rule relating to the creation of a binding agreement is that "for the parties to be bound they must have finished reaching an agreement, so that it is possible to infer an intention on the part of both of them to be bound immediately". In this case by the letter, the appellants and the respondents had finished reaching an agreement, and it was against the weight of the evidence that the appellants were not in breach of it;

(2) the learned trial judge had taken into account the fact that the appellants were not the contractors for the project and their contract was merely to supply the glass after substantial completion of the project by the respondents. There was therefore no reason to interfere with the assessment of damages made by the learned Judge.

COURT OF APPEAL.

Tan Jing Quee for the appellants.

Edmund Nathan for the respondents.

Cur. Adv. Vult.